

MEMORANDUM

TO: All interested persons

FROM: Charles D. McGuigan  
Assistant Attorney General

SUBJECT: Legislation Passed by the 2004 Legislature

DATE: April 2, 2004

The 2004 South Dakota Legislature considered 530 pieces of legislation. The House introduced 312 Bills and the Senate introduced 218 Bills. The Governor signed 311 Bills into law.

The Attorney General directly introduced six pieces of legislation during the 2004 legislative session. The Legislature adopted five of the six bills. Four of the Attorney General's Bills came from the Attorney General's Open Government Task Force. SB59 revises certain provisions regarding public records kept by state agencies and amends what is commonly known as the gag law. SB60 makes certain information kept by a law enforcement agency concerning calls for service available to the public. SB62 provides a procedure for handling certain complaints regarding open meeting violations and creates an open meetings commission. The one Attorney General Bill that failed to pass was SB61 which would have permitted the release of booking photographs to the public. The Attorney General also introduced, and the legislature passed, HB1053 which increases liquidated court costs; HB1054 which revises the allowable share provision of the escrow fund for tobacco litigation and HB1055 which revises certain provisions regarding the offense of witness tampering. In addition to these 6 pieces of legislation, the Attorney General sponsored two other pieces of legislation with the aid of specific legislators. HB1152, introduced by Representative Konold, authorizes the construction of a law enforcement training academy, a criminal forensic laboratory and a criminal justice and emergency operations center. SB95, introduced by Senator Schoenbeck, will permit the Law Enforcement Officers Standards Commission to refuse certain applications based on juvenile adjudications and dispositions and allows the Commission to access certain juvenile records.

During the 2004 legislative session, the Attorney General's Office monitored 155 pieces of legislation, supported 15 pieces of legislation and opposed 11 pieces of legislation.

The Legislature passed the following Bills and, unless noted otherwise, the following will become law on July 1, 2004.

**HB1005** Requires counties to determine the unreserved, undesignated general fund balance at certain times of the fiscal year and to publish and report this information. The reporting dates are March 31 and September 30, and the result shall be published in the minutes of the proceedings of the board of county commissioners and to the Department of Legislative Audit.

**HB1012** Revises the definition of a victim for purposes of determining who is permitted to speak on behalf of a victim at the time of sentencing. The bill will allow the parent, spouse, next of kin, custodian, guardian, foster parent and other advocates to testify as a victim at sentencing under certain circumstances.

**HB1013** Requires notice to the Attorney General of appeals in certain juvenile proceedings regarding abuse and neglect, children in need of supervision, or delinquency.

**HB1024** Authorizes counties to use the South Dakota grass land fire index to regulate the use of fireworks.

**HB1027** Provides for the discharge of an involuntarily committed person if that person no longer meets commitment criteria.

**HB1053** Increases liquidated court costs. This bill increases court costs dedicated to law enforcement training by \$3.00.

**HB1055** Revises certain provisions regarding the offense of witness tampering. This bill amends 22-11-19 to clarify that actually injuring a witness or the witness's property amounts to witness tampering. The bill also creates a new section which will make retaliatory conduct witness tampering.

**HB1056** Implements an interstate wildlife violator compact. The compact will allow conservation officers to issue a citation and power of attorney to residents of compacting states rather than the current practice of

making offenders post a bond or surety before being released.

- HB1066** Revises certain provisions related to controlled substance registration. This bill will allow nurse practitioners and licensed nurse midwives to write certain prescriptions.
- HB1067** Schedules Alpha-methyltryptamine (AMT) and 5-methoxy-n, n-diisopropyltryptamine (5-MeO-DIPT) as schedule 1 controlled substances.
- HB1078** Revises certain provisions regarding parole agreements.
- HB1079** Revises certain provisions regarding preliminary hearings for parole violators. The bill will eliminate the need for a preliminary hearing if the parolee is under arrest, has left the state, or is convicted of a felony or misdemeanor. The preliminary hearing would occur before an independent hearing officer.
- HB1082** Revises certain provisions regarding registered agents and service of process for certain business entities. This bill adopts selected uniform law provisions regarding service upon registered agents and corporation principle offices.
- HB1088** Provides for the certification of K-9 teams by the law enforcement officers standards commission. This bill allows the commission to certify K-9 teams for the detection of odors of drugs and controlled substances, explosive materials and other substances, and apprehension or search skills. The act requires a K-9 team to be recertified on an annual basis.
- HB1098** Revises certain provisions relating to referendums in county road districts.
- HB1100** Provides for additional uses of the county law book and law library fund. This bill will allow UJS to purchase computers and software in addition to printed materials.
- HB1101** Limits the time period during which children in need of supervision may be held in a detention facility.
- HB1102** Repeals and reestablishes the interstate compact on juveniles.
- HB1103** Revises certain court automation surcharges. This bill increases court automation fee for civil cases by \$5 to

\$20, in small claims actions by \$3 to \$6, and the fee in criminal cases from \$3-\$5 depending upon the offense committed. In addition, the bill increases the court automation fee by \$5 for the filing of appeals with the Supreme Court. The court automation fee is in addition to the liquidated cost increase in HB1053.

**HB1104** Defines felony aggravated indecent exposure as a sex crime for purposes of the registration of convicted sex offenders.

**HB1108** Revises the definition of unlawful sexual contact. This bill clarifies that sexual contact can occur over the clothing of the victim.

**HB1111** Clarifies the regulation of ephedrine and declares an emergency. This bill classifies as a schedule 3 controlled substance ephedrine and its derivatives including ephedra, herbs and herbal products that contain ephedrine alkaloids, ma huang, Chinese ephedra, ephedra Sinica, ephedra Herb Powder, Epitonin or any extract of these substances. The bill excludes any drug approved by the Department of Health for over the counter sales such as Sudafed. This bill included an emergency clause and was signed by the Governor on February 26, 2004. This bill is now the law in South Dakota.

**HB1117** Revises the requirements for operating a motor vehicle with an instruction permit. This bill will allow an instruction permit holder to drive between 6:00 a.m. and 10:00 p.m. if accompanied by a person holding a valid operators license who is at least 18 and has at least one year of driving experience. The bill also allows an instruction permit holder to drive between 10:00 p.m. and 6:00 a.m. if accompanied by the driver's parent or guardian.

**HB1126** Allows the prosecuting attorney to sign the summons in a juvenile case.

**HB1136** Repeals the mandated business hours for certain county offices and allows the county commissioners to establish the hours of operation for county offices.

**HB1141** Authorizes the services of ex parte protection orders on Sundays and holidays. Currently, an ex parte protection order can only be served on a Sunday or a holiday if the court has approved service on those days.

- HB1142** Revises certain provisions relating to the election of venue for an administrative appeal. This bill allows a non-resident or foreign corporation to file an administrative appeal in the Circuit Court for the county of the business's principle place of business in South Dakota.
- HB1151** Authorizes a motorcycle to display a blue light as part of the vehicles rear break light.
- HB1152** Authorizes the Attorney General to construct a new law enforcement training academy, criminal forensic laboratory and a criminal justice and emergency operations center in Pierre.
- HB1158** Prohibits the taking of certain pictures of another without that persons consent. This bill creates a class 1 misdemeanor for any person to secretly film or videotape a person in the nude or in the victim's undergarments. This bill is in response to an apparently growing internet industry of purchasing and displaying such photographs and videos.
- HB1159** Prohibits certain persons from providing care and supervision for children in child welfare agencies, registered family daycare homes and unregistered family daycare homes. This bill makes it a class 1 misdemeanor to allow a person convicted of a sex offense, child abuse or any felony to be within a daycare for a period of five years after conviction. This bill contained an emergency clause and was signed by the governor on March 9, 2004, and has been the law in South Dakota since that date.
- HB1161** Prohibits certain practices associated with unarmed retrieval of small game and establishes a penalty. Under this bill it will be a class 2 misdemeanor for any person retrieving downed small game from private land to drive or flush small game towards the hunter's hunting group.
- HB1176** Revises the definition of criminal pedophilia. This bill removes the incest exception from the definition of criminal pedophilia.
- HB1177** Repeals certain provisions prohibiting certain government purchases and declares an emergency. This bill repeals SDCL 5-18-2.1. This bill contained an emergency clause and was signed by the governor on February 17, 2004.

- HB1183** Provides the temporary replacement of any elected official incapacitated by illness or accident.
- HB1202** Creates a task force to study state and local government. The task force shall identify unfunded mandates and explore areas where inter-governmental cooperation may be fostered in the future.
- HB1203** Advises certain provisions regarding threats upon law enforcement officers and their families. This bill clarifies that an oral or verbal threat to a law enforcement officer is prosecutable to the same extent as a written threat.
- HB1207** Requires any judgment of conviction to indicate whether the charge involves domestic abuse. The bill amends SDCL 25-10-34 and mandates that the state's attorney indicate on the summons, complaint, information, indictment, arrest warrant and judgment of conviction whether the charge involves domestic abuse.
- HB1228** Provides for interstate contracts for the treatment of individuals with mental illness or chemical dependency and declares an emergency. This act became law on March 9, 2004 when the Governor signed the bill.
- HB1231** Requires municipalities and counties to establish criteria and conditions in the zoning ordinance before authorizing certain conditional uses.
- HB1235** Revises certain provisions related to pull tab dispensing machines. This bill expands the organizations which can have a mechanical pull tab dispensing device to include fraternal or charitable organizations.
- HB1248** Permits counties, in the absence of an organized township, to levy special assessments to maintain and improve certain public rights of way.
- HB1267** Revises certain provisions regarding blood samples taken after violent or accidental deaths.
- HB1275** Requires chemical tests of drivers involved in accidents resulting in serious bodily injury. This bill creates an exception to the implied consent law which would require a driver to submit to the withdrawal of blood or other bodily substance for chemical analysis if the driver has been involved in an accident resulting in death or serious bodily injury of another person. The bill defines serious bodily injury

as such injury as is grave and not trivial and gives rise to apprehension of danger to life, health or limb.

**HB1295** Revises certain enforcement procedures regarding the prohibition on certain objects dangling between a motor vehicle driver and the vehicle windshield. This bill makes a dangling object violation a secondary offense and a driver can be cited only after being pulled over for another offense.

**SB1** Provides for a criminal code revision commission and declares an emergency. This act became law on February 26, 2004, after signature by the Governor. The act creates a fifteen member commission to review not only title 22, but also all drug offenses and driving under the influence offenses. The commission also, may, at its discretion, examine any offense, whether inherently criminal, procedural or administrative, if the offense is punishable as a felony or misdemeanor or by the imposition of any fine or civil penalty. The commission must submit its recommendations for changes prior to the beginning of the 2005 legislative session.

**SB15** Revises certain miscellaneous procedures at the polling place and provides certain penalties. This bill makes it a class 1 misdemeanor for precinct superintendents, precinct deputies and counting boards to not act in an impartial manner. The bill also changes provisions concerning poll watchers.

**SB54** Provides for the inclusion of certain information on required abortion reports and clarifies the confidential nature of the information.

**SB56** Provides that certain minors who have been adjudicated for driving under the influence be defined as children in need of supervision. This bill applies to zero tolerance DUI's by minors.

**SB57** Repeals and revises certain provisions relating to mandatory consecutive sentences. This bill removes the requirement that a prisoner who commits an offense as a prisoner cannot start serving a sentence for that offense until completion of their original sentence. The bill allows for the sentencing court to specifically order the sentences to run concurrently and no longer mandates that they be consecutive.

**SB59** Revises certain provisions regarding public records kept by state agencies. This bill modifies what is commonly known as the gag law to protect financial,

proprietary and trade secret information from disclosure. That bill also reduces the current penalty from a class 6 felony to a class 1 misdemeanor.

**SB60** Allows a law enforcement agency to release information concerning calls for service to the public and the media. The bill is discretionary and does not mandate that a law enforcement agency release call for service information. Further, identifying information cannot be released.

**SB62** Provides a procedure for handling certain complaints regarding open meeting requirements and creates an open meetings commission. Under the bill, a states attorney may prosecute an open meeting violation, determine the open meeting complaint does not have merit or send the complaint to the South Dakota open meetings commission. The Commission will be made up of five states attorneys who will issue a written decision. If the commission finds a violation of the open meeting law, the commission will issue a public reprimand to the offending official or governmental entity.

**SB64** Permits the filing of an allegation of habitual criminality after arraignment under certain circumstances.

**SB66** Revises the definition of an abused or neglected child to include exposure to the manufacturing of methamphetamines.

**SB68** Revises certain provisions relating to the receipt of notice of an appeal in an administrative appeal. The bill removes the jurisdictional bar to the appeal if a party fails to serve the notice of appeal upon the hearing examiner.

**SB74** Grants to counties and townships the authority to defray the cost of abating a public nuisance and increases the penalty for failing to abate certain public nuisances. The bill makes it a class 1 misdemeanor if any person has been served with personal notice by law enforcement concerning the condition of the persons property as a nuisance and that person fails to abate the public nuisance within 60 days.

**SB77** Provides that certain third and subsequent violations of stalking protection orders are felony offenses. The third offense of violating a stalking protection order within a five year period will be a class 6 felony.



- SB83** Revises the time period when a holder of restricted minors permit may operate a motor vehicle. This bill extends the hours a person holding a restricted minors permit may drive to 10:00 p.m. from the current 8:00 p.m.
- SB84** Requires certain sellers and lessors of residential property to disclose any knowledge of the existence of prior manufacturing of methamphetamines.
- SB90** Repeals the discretion of the court to sentence persons to the penitentiary for an indeterminate term.
- SB93** Provides that certain third and subsequent violations of domestic abuse protection orders are felony offenses. Similar to SB 77, the third violation of a protection order within a five year period would constitute a class 6 felony.
- SB95** Permits the Law Enforcement Officers standards Commission to refuse certain applications based on juvenile adjudications and dispositions and to provide for access to certain juvenile adjudications and dispositions by the Commission. This bill allows the Law Enforcement Officers Standards Commission to consider juvenile offenses which would constitute felony drug offenses, sex crimes, or crimes of violence if committed by an adult.
- SB107** Revises certain provisions relating to the computation of time to be served for the failure to pay certain fines, costs or restitution.
- SB108** Clarifies certain provisions concerning the residency requirements for states attorneys in certain small counties. This bill authorizes a person in a contiguous county to run for states attorney in a county with a population of less than 5,000 persons.
- SB115** Prohibits the disruption or interference with traffic signal preemption systems and provides a penalty. This makes it a class 2 misdemeanor for persons to change traffic lights by using devices available over the internet that trigger light control systems used by emergency vehicles.
- SB123** Revises certain provisions regarding the county wheel tax.
- SB132** Grants counties the authority to discuss certain economic development information in executive session.

- SB164**      Revises certain provisions relating to the county zoning laws.
- SB170**      Revises the period of time when certain penalties apply for failing to file or pay certain taxes due. This bill generally extends from 30 to 60 days, the time period that must elapse before criminal charges can be filed for failing to pay taxes.
- SB182**      Prohibits capital punishment of juvenile offenders.
- SB184**      Prohibits human cloning.
- SB188**      Revises certain provisions relating to access to isolated tracts of land.

Overall, the number of bills introduced increased slightly during the 2004 session. The number of bills dealing with law enforcement, the criminal justice system, victims and domestic abuse were down once again this year.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2004 Legislature at the South Dakota Legislative Research Council's website. The web address is:  
<http://legis.state.sd.us/sessions/2004/index.cfm>.

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